



An
Bord
Pleanála

Inspector's Report ABP-314578-22

Development

Derelict site comprising of a two-storey, mid-terrace residential premises and surrounding

Location

at 20 Rossa Avenue, Garryowen, Limerick, V94 V08C

Planning Authority

Limerick City and County Council

Notice Party

Paul McMahon c/o John J. M Power & Company Solicitors, Hospital Co. Limerick.

Date of Site Inspection

26th February 2024

Inspector

Claire McVeigh

1.0 Introduction

- 1.1. This case relates to a request by Limerick City and County Council for consent of An Bord Pleanála to the compulsory acquisition of the subject site at 20 Rossa Avenue, Limerick in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The subject site is a mid-terrace residential property and surrounding lands of approximately 0.010 hectares located on the eastern side of Rossa Avenue in the Garryowen area of Limerick city. The rear of the property partly abuts the boundary with the College of Further Education and Training Musgrave Street Campus and partly the Markets Field Stadium.
- 2.2. The two-storey property has a front garden area with vehicular access gates and space for parking a car. The gates are secured by cable ties and the front garden is not maintained, with overgrown vegetation along the boundaries and in front of the property. The adjoining properties are occupied and well maintained.

3.0 Application for Consent for Acquisition

- 3.1. Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under section 16 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to the serving of notices under section 8(2), on 11th November 2021, (i.e., advising of the Local Authority's notice of intention to enter the site on the register of derelict sites), and also under section 8(7), on 21st December 2021 by registered post, (i.e., advising of the Local Authority's decision to enter the site on the register of derelict sites).
- 3.2. **Application and Objection**
- 3.3. **Notice of Intention to Acquire**
- 3.4. Limerick City and County Council (LCCC) advertised a "Notice of intention to acquire derelict site compulsory under the Derelict Site Acts 1990, (as amended by the

Planning and Development Act, 2000)” in the Limerick Post newspaper on the 9th July 2022. The site was described as follows in the notices:

A derelict site comprising a two-storey, mid-terrace residential premises and surrounding land situate at 20 Rossa Avenue, Garryowen, Limerick, V94 V08C, containing 0.009 hectares or thereabouts. The said property and surrounding land are in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-114-21 in the Derelict Sites Register established and maintained by Limerick City and County Council under section 8 of the Derelict Sites Act, 1990.

- 3.5. A map of the derelict site was placed on public display at LCCC’s Property and Community Facilities Departments and submissions were invited by an owner, lessee, or occupier on or before the 8th day of August 2022.

4.0 Objection to Acquisition

- 4.1. An objection to the proposed acquisition was submitted to LCCC from John J.M Power & Company Solicitors (on behalf of Paul McMahon) in a letter dated 13th July 2022 and dated stamped as received by LCCC on the 14th July 2022. It was advised by the solicitors, on behalf of their client, have made a complaint to the Financial Services and Pensions Ombudsman in connection with a mortgage charged on the property at Rossa Avenue. They are awaiting the outcome of the complaint and ask the council to not include the property at 20 Rossa Avenue on their list of compulsory acquisitions until a decision is received from the Financial Services and Pensions Ombudsman.
- 4.2. I note that LCCC also separately served notice of intention to acquire derelict site compulsorily to Ken Fennell and James Anderson as Joint Receivers c/o Restructuring Services Deloitte, RFS Deloitte. No objection was submitted.
- 4.3. LCCC’s Property & Community Facilities Department following receipt of the objection by Paul McMahon wrote to his agent John J.M. Power & Company solicitors, by letter dated 26th July 2022, seeking evidence of being the property owner, lessee or occupiers as defined in section 15 (2) of the Derelict Sites Act 1990 (as amended).

- 4.4. A copy of the Deed of Assignment from Vincent Madden to Michael Casey and copy of Letters of Administration in testate in the Estate of Michael Casey (deceased) that issued to Paul McMahon on the 12th November 2004 was submitted as evidence. Cover letter from John J.M Power & Company, dated 28th July 2022, stating that it is hoped that the property would be sold by Mr. McMahon as per representative of the estate of Michael Casey (deceased).
- 4.5. The Board wrote to Paul McMahon c/o John J.M Power Company Solicitors on the 19th September 2022 seeking any observations regarding the proposed compulsory acquisition of the site by LCCC. No response was received by the given last date to respond, i.e., the 10th October 2022.
- 4.6. Subsequently, following section 221 (3)(a) notification by the Board of a new date for determination which issued on 21st February 2023 a letter, dated 2nd May 2023, was sent from John J.M Power & Company on behalf of Paul McMahon advising that he intends to reside at the property at 20 Rossa Avenue and this should be taken into consideration when making a decision.
- 4.7. **Local Authority's Application for Consent**
- 4.8. The local authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 6th September 2022 and was accompanied by the following:
- Compulsory Acquisition Report.
 - Derelict Site Location Map.
 - Copy of the Section 15 Notice issued to the reputed owner Paul McMahon and appointed receivers Ken Fennell and James Anderson as joint receivers c/o Restructuring Services Deloitte.
 - Copy of the newspaper notice, dated 9th of July 2022.
 - Copy of objection letter and acknowledged response.
 - Copy of letter requesting evidence of owner, lessee or occupier and acknowledged response.
 - Site inspection photographs of the property from the case file.

4.9. The **Compulsory Acquisition Report** can be summarised as follows:

4.10. Limerick City and County have established a specialised 'Dereliction and Vacancy Team' to take an area-based collaborative approach to addressing vacancy and dereliction in Limerick City and in the towns and villages in the County. The team focuses on bringing derelict and vacant sites back into use, particularly in areas of high housing demand, town and village centres and the historic core of the city. They seek to work proactively with property owners, with timely actions and improvement of sites through positive engagement. It is stated that the powers under the Derelict Sites Act, 1990 are used only where necessary, where all reasonable alternatives have been exhausted.

Matters that are taken into account by the Dereliction and Vacancy Team include:

- outstanding planning permissions,
- evidence of efforts to address vacancy and dereliction,
- security, safety to the public and condition of the site,
- the conservation value of the building and requirement for remedial restoration works, and
- the feasibility of various actions to make good the site and find viable uses for the site.

4.11. The property was first inspected on 20th December 2017 and a derelict site case was opened ref: DS-012-18. This case was closed in May 2019 with commitments from the reputed owner (Paul; McMahon) to carry out works. The reputed owner of the property was in the process of selling the property to LCCC but was unable to complete the sale, as a charge was owed on the property.

4.12. The site fell further into dereliction during the period between May 2019 to October 2021. A further inspection was carried out and a new derelict site case was opened Ref: DS-114-21. The report notes that the front of the property is unsecured and local residents have attempted to tidy the front area several times to avoid children being injured and to prevent dumping rubbish. The property is now affecting adjacent properties with water ingress and dampness coming through from the derelict property. Site inspections have noted that internally the ceiling is falling down and there are considerable signs of water damage to the internal finishes on the property.

Vegetation is growing from gutters, fascia and throughout the front and back gardens.

- 4.13. Correspondence and a deed of appointment identifies Ken Fennell and James Anderson of Restructuring Services Deloitte (Deloitte) as joint receivers for the charge owned on the property on 10th March 2020. Deloitte were in the process of selling this property to LCCC until Paul McMahon, son of Michael Casey (deceased) objected to the sale.
- 4.14. On the 11th November 2021 LCCC wrote to both Paul McMahon and Deloitte to give notice of its intention to enter the land in the derelict sites register. On the 9th December 2021 LCCC met with an agent for Deloitte in response to the section 8 (2) notice and a list of remedial measures were provided to Deloitte so that they might remove the property from dereliction. Minor works were completed; however, the property fell into further dereliction.
- 4.15. Photographs from the site inspections dated December 2017 and October 2021 are included with the application.
- 4.16. LCCC continued to receive complaints from the public about the derelict state of the site and how it is affecting local residents. LCCC contacted Deloitte receivers seeking an update on their intentions for the property and they identified challenges between the chargeholder, START Mortgages DAC and Mr McMahon. No remedial measures were carried out by any party during the period. The particulars of the land were entered in the derelict sites register on 20th December 2021 and section 8 (7) notice of entry of land in derelict sites register sent by registered post on 21st December 2021 to Paul McMahon and Deloitte. As the site continued to be in a derelict state LCCC exercised its power of compulsory acquisition and gave notice of intention to acquire the derelict site compulsorily to both Paul McMahon and Deloitte.
- 4.17. Objection letter was received from John J.M. Power & Company Solicitors on behalf of Paul McMahon. LCCC acknowledges the objection and receipt of the ownership documentation and highlight that they cannot adjudicate on the true ownership of the property as guided under Section 15(2) of the Derelict Sites Act, 1990 (as amended)
- 4.18. The local authority sets out that the objection does not address the derelict nature of the site or identify any efforts made to remedy same or proposed any solution to

solving the dereliction. They contend that it is the inaction of owners and the failure of their duties under the Derelict Sites Act, 1990 (as amended) that jeopardises the future use of the property in the area due to their continues neglected and derelict stated. It is stated that the property continues to deteriorate and attract negative attention in a key residential area of the city of Limerick.

4.19. Objector's Submission

4.20. No submission was received prior to the notified last date, namely the 10th October 2022.

4.21. I note a letter from John J.M. Power & Company on behalf of the objector was received by the Board on the 3rd May 2023 subsequent to a section 221 (3) (a) notice by the Board. The submission states that Paul McMahon intends to reside at the property at 20 Rossa Avenue and that this should be taken into consideration when making a decision on the compulsory acquisition application.

4.22. Local Authority Response to the Objection

4.23. None

5.0 Planning History

5.1. None.

6.0 Policy Context

Limerick City and County Development Plan 2022-2028

6.1. One of the strategic objectives for Limerick (Chapter 1) is to facilitate revitalisation and consolidation of the City through public realm and place-making initiatives, including addressing vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest (1.3.4).

6.2. The themes of revitalisation of towns and villages and the delivery of compact growth are central to the Core Strategy (Chapter 2) and the Spatial Strategy (Chapter 3).

6.3. Policies CGR P1 and CGR P4 set out how this can be achieved including development of brownfield and underutilised lands within the built footprint of urban

areas and actively addressing dereliction and vacancy. One of the measures required to create compact, dense and sustainable urban centres is 'Active Land Management' (3.3.2) which is envisaged as important to bring vacant and underutilised land in urban areas into beneficial use (Policy CGR O4). Key legislative measures to facilitate this include the powers under the Derelict Sites Act 1990.

- 6.4. It is noted (3.3.2.2) that derelict sites can have a negative impact on the social, visual and commercial aspects of a neighbourhood. Limerick City and County Council is proactive in identifying and seeking the improvement of such sites to address incidences of decay, prevent deterioration of the built fabric and bring buildings back into active use.
- 6.5. Objective CGR O6 – Derelict sites – seeks to utilise the provisions of the Derelict sites Act 1990, including the maintenance of the Derelict Sites Register and CPO powers to address instances of dereliction and decay in the urban and rural environment and bring properties back into active re-use.
- 6.6. The site is located in Urban Character Area Objective UCA O2 – Surrounding suburban area and zoned 'Existing Residential' in which the objective is "To provide for residential development, protect and improve existing residential amenity."

Derelict Sites Act 1990 (as amended)

- 6.7. The Derelict Sites Act 1990, as amended, makes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables local authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.
- 6.8. Section 3 of the Act defines 'derelict site' as: "Any land...which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of— (a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or (b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or (c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law."

- 6.9. Section 8 of the Act requires local authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/owners of their intention to do so.
- 6.10. Section 9 places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site.
- 6.11. Section 10 places a similar duty on local authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site.
- 6.12. Section 11 of the Act enables local authorities to serve a notice on an owner or occupier of land, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site.
- 6.13. Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area.
- 6.14. Section 15 sets out arrangements for giving notice, if the local authority intend to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically, section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

7.0 Assessment

- 7.1. The site contains two storey mid-terrace currently unoccupied residential property. The front vehicular gateway has been secured with cable ties and I was unable to access the rear of the property. The front garden is not maintained, overgrown vegetation and some litter was evident. The front elevation of the boundary wall and property also has not been maintained, the paint has blistered off in part, and requires repair and repainting. The roof tiles appear to have gaps and would require repairing. Vegetation is growing from the chimney pot and gutters.
- 7.2. The site is located within the Garryowen area of Limerick city, within easy access to all amenities of the city. In the development plan Garryowen is identified as substantially residential in character with a range of services (Urban Character Area

Objective UCA O2 – Surrounding suburban area). Rossa Avenue is a vibrant residential area, with a motor works tyre centre to the northern end of the avenue and the Limerick and Clare Further Education Campus close to the southern end. The avenue links Garryowen Road and Mulgrave Street. The site is positioned between two well maintained and occupied dwellings.

- 7.3. LCCC have been in contact with the reputed owner of the property (Paul McMahon) since 2017, under the initial derelict site case ref: DS-012-18. Under the derelict site's legislation, the Council requested the owner of the site to carry out some works and the derelict site case was closed in May 2019. I note it was the intention of the reputed owner to sell the property to LCCC on completion of the agreed works. The works were not undertaken to take the property out of dereliction and a new derelict site case was opened, the subject of this current application ref: DS-114-21.
- 7.4. I note that Ken Fennell and James Anderson of Deloitte were appointed receivers for the charge owned on the property in 2020. It appears from the submitted report that Deloitte had reached an agreement to sell the property to LCCC. However, this sale was unable to proceed due to an objection from Paul McMahon the reputed owner of the property. Deloitte engaged with LCCC on the 9th December 2021 to agree a list of remedial measures to remove the property from dereliction. It is reports that 'some minor works were completed' but that the property fell further into dereliction.
- 7.5. I note from the Compulsory Acquisition Report that complaints have been received by LCCC in respect to the impact of the property on the street and the implications of water ingress and dampness to adjoining properties. The report states that the local residents have attempted to tidy the front area several times to avoid children being injured and to prevent dumping of rubbish.
- 7.6. In 2021 a Notice under Section 8 (7) of the Act, was sent to both Paul McMahon and Deloitte. The notice also referenced the unsightly or objectionable condition of the land and the presence of litter, rubbish, or waste. An objection was received by Paul McMahon in relation to the compulsory order and LCCC delayed further action.
- 7.7. The LCCC submission, to the Board, provides a rationale for the need to compulsory acquire the derelict site. Should the Council not acquire the site, it is considered the site will remain as a derelict site and will jeopardises the future use of the property in the area. It is considered the property continues to deteriorate and attract negative

attention in a key residential area of the city. Whilst I note the objector in their updated submission to the Board dated 2 May 2023 states their intention to reside at the property, I did not see any significant change in the property from the case file photographs to sufficiently demonstrate that measures are/have been undertaken by Paul McMahon to live in the property, furthermore I note the timeframes for both the initial derelict site case (DS-012-18) and the current (DS-114-21) and LCCC's engagement since 2017 and I consider both parties identified in the contested ownership have had sufficient opportunity since the first notifications to undertake remedial measures to take the property out of dereliction. Furthermore, I note that no objection to the compulsorily acquisition was submitted by Ken Fennell and James Anderson as Joint Receivers c/o Restructuring Services Deloitte.

- 7.8. I note the contested ownership of the property. Should the Board permit the compulsory purchase, I consider this a matter for the planning authority and not a material consideration for addressing the issues of dereliction on the site.

8.0 Conclusion

- 8.1. I am satisfied that: the process and procedures undertaken by Limerick City and County Council have been fair and reasonable, that the local authority has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site.
- 8.2. Having regard to the constitutional and Convention protection afforded to property rights, I consider that the acquisition of the derelict site comprising a two storey mid-terrace residential premises and surrounding land at 20 Rossa Avenue, Garryowen, Limerick, V94 V08C, containing 0.010 hectares or thereabouts, as set out in the Derelict Site Notice issued under Section 15 of the Derelict Sites Act 1990 (as amended) and dated 1st July 2022 and on the deposited maps (derelict site shown outlined in red bearing reference No. DS-114-21) pursues, and is rationally connected to, a legitimate objective in the public interest, namely to prevent deterioration of the built fabric and bring buildings back into active reuse.
- 8.3. I am also satisfied that the acquiring authority has demonstrated that the means chosen to achieve that objective impair the property rights of affected landowners as little as possible; in this respect, I have considered alternative means of achieving

the objective referred to in submissions to the Board, and am satisfied that the acquiring authority has established that none of the alternatives are such as to render the means chosen and the CPO made by the acquiring authority unreasonable or disproportionate.

- 8.4. The effects of the CPO on the rights of affected landowners are proportionate to the objective being pursued. I am further satisfied that the proposed acquisition of these lands would be consistent with the policies and objectives of the Limerick City and County Development Plan 2022-2028, and specifically Objectives CGR 06 and CGR P1 which seek to actively address instances of dereliction and decay in the urban and rural environment and bring properties back into active reuse and to revitalise the city, towns and villages. Accordingly, I am satisfied that that the confirmation of the CPO is clearly justified by the exigencies of the common good.
- 8.5. I consider there is sufficient evidence from the documentation received and from site inspection to determine that the current state of the property detracts, to a material degree from the amenity, character, or appearance of land in the neighbourhood. To this end, I consider LCCC has taken all reasonable steps to prevent the neglected, unsightly, or objectionable condition of the property.
- 8.6. Having regard, therefore, to all the information available on the file and the continued appearance and condition of the property, which as stated constitutes a derelict site, I consider that it is appropriate that the local authority's application for consent to compulsorily acquire the site at Derelict Site at 20 Rossa Avenue, Garryowen, Limerick, V94 V08C is granted.

9.0 Recommendation

- 9.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land, I consider that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.
- 9.2. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Act. I recommend, therefore, that the

Board grant consent to Limerick City and County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

- 10.1. It is considered that the site detracts to a material degree from the amenity, character and appearance of the land in the neighbourhood, owing to the neglected, unsightly and objectionable condition and the presence of litter, therefore, falls within the definition of a derelict site as defined in Section 3(b) and Section 3(c) of the Derelict Sites Act 1990 (as amended).
- 10.2. Having regard to the observed condition of the site and the documentation provided in relation to the procedures and steps taken under the Derelict Sites legislation to include the site on Limerick City and County Council's Derelict Sites Register and the serving of the notice on the lands, it is considered that the acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site. It is also considered that the objection made cannot be sustained having regard to that said necessity.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Claire McVeigh

Planning Inspector

14th March 2024